

REMARKS

This is intended to be a complete response to the Official Action mailed November 2, 2004, in which claims 21-40 were rejected.

Objection to the Disclosure

In the specification, paragraph [0001] has been amended to show the patent status of USSN 10/299,767 as U.S. Patent No. 6,618,991.

Double Patenting

Claims 21-40 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,618,991.

A terminal disclaimer over U.S. Patent No. 6,618,991 has been submitted herewith thereby mooting the rejection.

Rejection Under 35 U.S.C. §103(a)

Claims 21-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Applicant's Section-3 disclosure; Statements As To Information Not Found In Patents Or Publications (supplied with the IDS filed 07/29/2003).

Applicant respectfully traverses the rejection.

Regarding Examiner's statement that the two independent claims (21 and 32) are mere restatements of each other, it is respectfully noted that the position of the bonding material is not restricted in claim 21, while in claim 32, the bonding material is indicated as being disposed on the inner peripheral surface of the tubular sleeve therefore there is a measurable difference between the claims.

In the rejection it is stated:

"The tubular sleeve of the instant claims is encompassed by the tapered shaped plant sleeve recited in the applicant's Section-3 statements, and the methodology cited in the instant claims is also recited or inherent to the same statements, except for the bonding of the sleeve to the pot contained therein; the use of an elastic band is recited however in the said Section-3 statements.

The Examiner takes Official Notice that attachment of the sleeve to the pot contained therein is old and well-known in the art of plant sleeves, as cited in the instant claims.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the prior art sleeve(s) recited in the Applicant's Section-3 Statements, to include bonding material as cited in the instant claims, for the well-known advantages of that feature; specifically, retention of the sleeve about the pot."

Applicant traverses the basis for the rejection.

It is respectfully noted that the prior art statement in Section-3 of the Information Disclosure Statement filed July 29, 2003 admits only that it was previously known to have secured a **sheet of material**, not a sleeve, with an elastic band.

Examiner's apparent assertion that the Applicant admits that "sleeves" were known to have been secured about pots via bands is thus incorrect.

Examiner has taken "Official Notice" that "attachment of a sleeve to the pot" is "old and well-known" in the art. However, the "attachment of a sleeve to a pot" is not shown in the prior art statement of the IDS, Therefore, Applicant respectfully asserts that the Examiner is putting himself forward as having personal knowledge in this aspect of the floral industry.

Applicant therefore requests under 37 CFR §1.104(d)(2) and MPEP §707.05 that the Examiner provide an affidavit explaining the factual basis for his rejection of claims 21 and 32 so that the affidavit can be subjected to contradiction or explanation by the Applicant in accordance with the regulations.

Furthermore, Applicant asserts that it is not merely an obvious step to secure a sleeve about a flower pot just because a sheet of material has been known to be bonded or secured about a flower pot. Applicant respectfully traverses this assertion on the basis that there is no teaching, suggestion, motivation or incentive evident in the cited art for modifying the method of use of floral sleeves by prior teachings in the art regarding sheets of material applied about pots.

First, the sheets of material of the prior art (e.g., Weder 5,111,638, cited by the Examiner) are flat sheets of material while sleeves are preformed into

tubes. Weder '638, for example, teaches the adhesive application of the flat sheet about a pot.

The purpose of the adhesive bonding material on the sheet of Weder '638 or of an elastic band described in the prior art statement is to form, shape and hold the flat sheet into a cover about a pot. Since the flat sheet is not already formed into the shape of a tubular sleeve, the adhesive or elastic band connection of the flat sheet to the pot functions to hold the sheet in the shape of the pot.

Sleeves already have a tubular shape and therefore do not need an adhesive or band to form it into a pot shape. Thus the reasons of Weder '638 for using the adhesive on the flat sheet, or the elastic band of the IDS, do not apply to using them on a sleeve, and therefore provides no motivation for applying the adhesive or elastic bands to the sleeve of the present claims.

The bonding material or elastic band function to hold the sheet about the pot in the shape of a pot, but the sleeve already has a tubular shape and does not need a bonding material or band for this purpose. The addition of an adhesive or elastic band would simply be a redundant step repetitive of a function which has already been performed by the construction of the sleeve itself to have a formed shape.

One of ordinary skill in the art would therefore not be motivated to add an unnecessary step which would add time and inconvenience and cost to the plant packaging method.

Anyone who has ever tried to manipulate flexible materials with sticky surfaces (tape, saran wrap, fly paper) knows that such materials are often difficult to handle and may easily be inadvertently attached or bonded in undesired manners.

Therefore, the addition of an adhesive material to the inner surface of a sleeve or its use in attaching a sleeve to a pot as claimed herein would not be a trivial matter. In fact, it is more likely that one would be motivated to find ways to avoid using sticky adhesives to hold a sleeve to a pot.

In summary, it is now clear that the connection of a sleeve to a pot by using an adhesive or cohesive bonding material is not a simple matter. The teachings of using an adhesive or elastic band to attach a sheet to a pot does not provide a similar motivation when dealing with a tubular sleeve. Further, there are numerous reasons as noted about why one might avoid securing a sleeve about a pot via an adhesive or cohesive bonding material.

In view of the above, applicant respectfully requests reconsideration and withdrawal of the rejection of the claims under 35 U.S.C. §103(a).

Similar Issued Patents

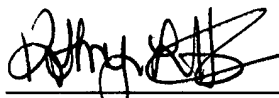
Furthermore, Applicant points to other patents issued to the Applicant in which claims similar to those pending herein have already been allowed. These include U.S. 6,047,524; 6,318,050; and 6,769,225.

Applicant submits herewith a terminal disclaimer over these issued patents.

Conclusion

In view of the above, Applicant respectfully submits the claims are now in a condition for allowance and request issuance of a Notice of Allowance therefore.

Respectfully submitted,



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